IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-10-2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.Nos.18237, 20643 to 20645 and 21375 of 2007
and
M.P.Nos.2, 5 and 6 of 2007 in WP No.18237/2007
and
MP Nos.2, 2 and 2 of 2007 in WP Nos.20643 to 20645/2007
and
MP Nos.2 and 5 of 2007 in WP No.21375 of 2007

G.Ganesan .. Petitioner in
W.P.No.18237 of 2007

P.Saratha .. Petitioner in
W.P.No.20643 of 2007

Pushpa Bensihar .. Petitioner in
W.P.No.20644 of 2007

A.S.Mujira Banu .. Petitioner in
W.P.No.20645 of 2007

1.M.Tamilselvi
2.M.Subburaman
*CT amended as per order dated 5.7.2007
in MP.3/07 in WP.21375/07
3.S.Kalavathi
4.R.Joseph Jayakumar .. Petitioners in
W.P.No.21375 of 2007

Vs

1.The Government of Tamil Nadu,
rep. by the Secretary to Government,
Health and Family Welfare Department,
Fort Saint George,
Chennai-600 009.
2.The Director of Medical Education,
Kilpauk,
Chennai.
3.The Director of Public Health and
Preventive Medicine,
Chennai.
4.The Director of Medical and Rural
Health Services,
Chennai-600 006.
5.The Joint Director of Medical and
Rural Health, Pudukkottai.

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6.The District Employment Officer,
Employment Exchange,
Pudukkottai.
7.Two Years Diploma Medical Laboratory
Technician Association,
rep. by its Vice President,
Nandakumar
No.3, Kannammal Nagar,
Valasaravakkam,
Chennai-600 087.
8.S.Sethuraman
9.T.Anitha
10.R.Ravichandran
11.E.Bhuvaneswari
12.L.Krishnaveni
(RR7 to 12 impleaded vide
order dt.29.08.2007 in
M.P.Nos.3 and 4 of 2007) .. Respondents in
W.P.Nos.18237 of 2007

1.The Government of Tamil Nadu,
rep. by the Secretary to Government,
Health and Family Welfare Department,
Fort Saint George,
Chennai-600 009.
2.The Director of Medical Education,
Kilpauk,
Chennai.
3.The Director of Public Health and
Preventive Medicine,
Chennai.
4.The Director of Medical and Rural
Health Services,
Chennai-600 006.
5.The Joint Director of Medical and
Rural Health,
Coimbatore District,
Thiruppur.
6.The District Employment Officer,
Employment Exchange,
Chennai.
7.Two Years Diploma Medical Laboratory
Technician Association,
rep. by its Vice President,
Nandakumar
No.3, Kannammal Nagar,
Valasaravakkam,
Chennai-600 087.
(R7 impleaded vide order
dt.23.10.07 in M.P.3 of 2007) .. Respondents in
W.P.Nos.20643 and
20645 of 2007

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1.The Government of Tamil Nadu,
rep. by the Secretary to Government,
Health and Family Welfare Department,
Fort Saint George,
Chennai-600 009.
2.The Director of Medical Education,
Kilpauk,
Chennai.
3.The Director of Public Health and
Preventive Medicine,
Chennai.
4.The Director of Medical and Rural
Health Services,
Chennai-600 006.
5.The District Employment Officer,
Employment Exchange,
Chennai.
6.Two Years Diploma Medical Laboratory
Technician Association,
rep. by its Vice President,
Nandakumar
No.3, Kannammal Nagar,
Valasaravakkam,
Chennai-600 087.
(R6 impleaded vide order
dt.23.10.07 in M.P.3 of 2007) .. Respondents in
W.P.No.20644 of 2007

1.The State of Tamilnadu,
rep. by the Secretary to Govt.,
Health and Family Welfare (C2)
Department,
Secretariat,
Chennai-600 009.
2.The Director of Medical and Rural
Health Services,
Chennai-600 006.
3.The Director of Medical Education,
Kilpauk,
Chennai-600 010.
4.The Director of Public Health and
Preventive Medicine,
Chennai-600 006.
5.The Joint Director of Medical and
Rural Health Services,
Nagapattinam.
6.The District Employment Officer,
Nagapattinam.
*CT amended as per order dated 5.7.2007
in MP.3/07 in WP.21375/07
7.S.Sethuraman
8.T.Anitha
9.R.Ravichandran

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10.E.Bhuvaneswari
11.L.Krishnaveni
(RR7 to 11 impleaded vide order
dt.28.9.97 in M.P.No.4/07) .. Respondents in
W.P.No.21375 of 2007

These writ petitions have been preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records and to quash the impugned order in G.O.(Ms)No.39, Family and Welfare (C2) Department, dated 5.2.2007 passed by the first respondent and to direct the respondents to fill up the vacancies in the post of Lab Technicians without any preference or discrimination in favour of the candidates who have passed out of all the recognized Institutions in the State of Tamil Nadu alike, and also without any discrimination between the CMLT and DMLT candidates.

For Petitioners : Mr.R.Balachandran in
WPs.18237,20643 to 20645/2007
Mr.R.Singgaravelan in WP.21375/07

For Respondents : Mrs.Nalini Chidambaram, SC
for Mr.N.R.R.Arun Natarajan and
Mr.V.Chandrasekaran
for impleaded respondents in
W.P.Nos.18237,20643 to 20645 of 2007
and for RR7 to 11 in WP.21375/07

Mrs.Shanmugavalli Sekar, GA
for RR1 to 6 in WPs.18237, 20643,
20645 & 21375/2007 and
for RR1 to 5 in WP.20644/07

COMMON ORDER

This order shall govern the above writ petitions, wherein the petitioners have sought for the relief of a writ of certiorarified mandamus to call for the records on the file of the first respondent in G.O.(Ms)No.39, Health and Family Welfare (C2) Department, dated 5.2.2007 and Govt. Letter No.52378/C2/2006-3, dated 3.5.2007, and also the order of the second respondent in his proceedings Ref. No.5289/E5/4/2006, dated 24.01.2007 respectively, and to quash the same and to direct the respondents to treat the candidates who have passed the Diploma in Medical Laboratory Technology Course of two years duration as well as the Certificate in Medical Laboratory Technology course of 1 year duration respectively, conducted by the Institutions recognized by the Government of Tamil Nadu for appointment to the post of Lab Technician Grade-II.

2.The court heard the learned counsel on either side. The affidavits filed in support of the petitions are perused.

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3.The case of the petitioners in all the petitions in short is that the petitioners are affected by the orders of the first respondent, dated 5.2.2007 and 3.5.2007 and also the order passed by the second respondent, dated 24.01.2007, whereby preferential treatment is given to the candidates of 2 years Diploma in Medical Laboratory Technology (DMLT) course; that the petitioners belonged to one category; that they are all in possession of a Certificate in Medical Laboratory Technology (CMLT) of one year course; that the State has issued a Government Order in G.O.(Ms) No.39, Health and Family Welfare (C2) Department, dated 5.2.2007, to appoint the eligible candidates to the post of Lab Technicians; but, the Government, without considering the history in prescribing the qualification, has given preference for the candidates, who have completed DMLT; that the qualification prescribed by the Government for the appointment to the post of Lab Technician of Grade I and II, was CMLT; that the CMLT course was introduced in the year 1986 with a promise that the students who passed that course, would be considered for appointment in the Government service; that the various institutions including the King Institute, stopped conducting CMLT course; that only in the year 1995, it has reintroduced the said course in an another form namely Diploma in Medical Lab Technician (DMLT) course, prescribing two academic years of study; that the syllabus offered in both CMLT and DMLT is one and the same; that when the petitioners studied CMLT course, there was no DMLT course offered; that upto the year 2007, both the candidates of CMLT and DMLT were treated alike for appointment in the Government service; that while so, now, the first respondent, without any cause, has given preference for DMLT arbitrarily; that the same is illegal and under these circumstances, these writ petitions have been brought forth.

4.Advancing his arguments on behalf of the petitioners, the learned counsel would submit that in the instant case, CMLT and DMLT courses have been treated alike in the past; that at a particular point of time, when CMLT course, which was actually conducted by the King Institute, was stopped, there was no DMLT; that the syllabus offered in both CMLT and DMLT is the same; that the G.O, which is under challenge, is not based on any reason; that it is nothing but arbitrary; that under these circumstances, no question of preferential treatment to be given to DMLT than the candidates, who have done CMLT course, would arise and hence, it has got to be quashed.

5.The learned counsel for the petitioners would further submit that if G.O.(Ms)No.39 is applied and preferential treatment, as found therein, is given to DMLT candidates, then the CMLT candidates would be denied employment, since the candidates, who underwent DMLT course, are huge in number; and that if this process is applied to DMLT, the students of CMLT cannot get any employment at all. Added further the learned counsel that at the time when the matter was taken up for consideration before the Tribunal, there were only 54 persons,

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who underwent DMLT course, and therefore, the Tribunal took the view that preferential treatment could be given to DMLT candidates, and after their appointment, the CMLT candidates could also be appointed; that now, the candidates from DMLT are huge in number; and that if they are given preferential treatment, the candidates from CMLT could not get any employment at all.

6.In answer to the above, it is contended by the learned Counsel for the respondents that it is not correct to state that CMLT and DMLT have got same syllabus and they are alike; that CMLT is the certificate course for a period of one year, where a certificate is issued; that so far as DMLT is concerned, it was a special course conducted by the King Institute, for a period of two years and thus, the post, which requires Lab Technician in the Medical Laboratory, would require more experience and therefore, the syllabus is different. Added further the learned Counsel that originally, the matter was challenged before the Tribunal in O.A.No.4608 of 2002, and there was an order passed by the Tribunal that preferential treatment must be given to two years Diploma in Medical Laboratory Technology course, in view of the experience and nature of course; that this order was challenged before this court by way of a writ petition, wherein interim order was originally granted; that in the writ appeal, the interim stay has been vacated; that following the same, orders have been issued to give preferential treatment to the students, who have actually undergone two years course, and obtained a certificate under DMLT; that pursuant to the G.O. (Ms) No.39, Health and Family Welfare (C2) Department, dated 5.2.2007, the DMLT candidates were appointed; that now, the writ petition has been filed, wherein G.O.Ms.No.39 has been challenged; that in view of the interim stay granted, all the appointments given to DMLT candidates, have been immediately cancelled; that there are 500 posts fell vacant; that in view of the stay granted by the court, no one either from DMLT or from CMLT was appointed; that the posts are vacant; that once the question as to whether preferential treatment is to be given to DMLT or CMLT, was taken up for consideration by the Tribunal and an order has been passed, and subsequently, it has been stayed and has not been vacated, and the stay order is in force, the CMLT candidates cannot now claim equal treatment with DMLT and hence, these writ petitions have got to be dismissed.

7.The learned Government Advocate further submitted that the State has created a post, namely Laboratory Technician Grade-III, by the Government order, dated 3.4.2007, whereby the students, who are having a certificate under CMLT, are to be provided the post; that for giving employment to them, the said special post has now been created; that under these circumstances, it could be well provided to them; that they need not compete with DMLT, and hence, these writ petitions have got to be dismissed.

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8.Concededly, the petitioners in all these writ petitions have underwent one year course in CMLT and also obtained the certificate in Medical Laboratory Technology, while the newly added respondents are candidates who underwent two years Diploma course in Medical Laboratory Technology namely DMLT. The petitioners herein have challenged the G.O.(Ms) No.39 dated 5.2.2007, wherein it is stipulated that the vacancies have got to be filled up from the Diploma in Medical Laboratory Technology (DMLT), and if there is any further vacancy, it should be filled up only from the CMLT. The case of the petitioners in short is that it is true that DMLT course was conducted by King Institute till 1994; that thereafter, no such course was available; that the candidates namely the petitioners herein, in view of the non-availability of the only one course namely DMLT, and on the fond hope of getting appointments in Government service, underwent the course namely CMLT, and they have been waiting for more than a decade. While the matter stood thus, after the commencement of the two years diploma course namely DMLT, again by the King Institute, the Association moved the Tamil Nadu Administrative Tribunal seeking a direction that preferential treatment should be given to the candidates who had underwent DMLT course. The Tribunal on enquiry, agreed with the case of the Association and granted the relief. The same was challenged by the candidates who underwent CMLT course, by filing a writ petition before this Court. Pending that writ petition, originally, stay was granted staying the operation of the order of the Tribunal in O.A.No.4608/2002. Thereafter, a challenge was made to that interim order by the Association consisting of two years Diploma in Medical Laboratory Technicians, and the interim stay was vacated by the Division Bench. Following the same, the Government has passed the present G.O.(Ms) No.39 dated 5.2.2007, and that is the subject matter of challenge in these writ petitions.

9.The learned Counsel appearing for the petitioners, were stressing that the petitioners underwent one year training and got the certificate in CMLT course; that the syllabus for CMLT and DMLT is the same; that at the time when they underwent the training under CMLT, there was no DMLT course at all; that for the interregnum period namely a decade, DMLT course was not available; that under such circumstances, there is no need or necessity to give any preferential treatment to DMLT; that while an order was passed by the Tribunal that preferential treatment should be given to the candidates from the DMLT, the same was challenged, and that writ petition is also pending; that under the circumstances, both the candidates from the CMLT and DMLT have got to be treated alike in view of the above reasons; that a reading of the G.O. would clearly indicate that preferential treatment should be given to DMLT candidates; and that if the G.O. is applied, all the posts could be filled up only from the candidates who underwent DMLT course. The learned Counsel for the petitioners would further contend that while the matter was considered by the Tribunal, there were only 54 vacancies; that

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having the same in mind, the Tribunal has observed that if those 54 vacancies are filled up, the other posts could be filled up from the CMLT course candidates; that as on today, hundreds of DMLT candidates are there; that if all these posts are allowed to be filled up applying the G.O.39, then no one candidate from the CMLT can have any opportunity, and under the circumstances, the G.O. has got to be struck down as one unreasonable. The learned Counsel would further add that if this procedure is allowed to continue and is given force, it must take away all the job opportunities to the candidates who have completed the CMLT course, to which they are really entitled to, and hence, it has got to be set aside.

10.A query was made to the learned Government Advocate for the State as to the available vacancies in the post of Lab Technicians. Now, a data is filed before the Court to the effect that 442 vacancies are there, and DMLT qualified candidates have applied for 332 vacancies, and thus, 110 posts are actually vacant. Added further the learned Government Advocate that a G.O. came to be passed by the State on 3.4.2007 whereby a post of Laboratory Technician Grade-III has been created, which could be filled up only from the candidates who possessed certificate in Medical Laboratory Technology namely CMLT one year course, and apart from that, even for another post namely Field Assistant, the CMLT candidates are eligible. It is brought to the notice of the Court that there are 2000 and odd posts available in these categories, out of which more than 1000 CMLT candidates have applied for; that they were filled up; that more than 1000 posts are yet to be filled up, and the same could be done only from the CMLT.

11.The Court paid its anxious consideration on the submissions made. This Court is unable to agree with the contentions put forth by the petitioners' side for more reasons than one. Concededly, all the petitioners herein have underwent the CMLT course which is admittedly for a period of one year. As far as the DMLT candidates are concerned, they have undergone the training for a period of two years, and thus, comparatively, the DMLT course candidates who have undergone the training for two years, in view of their experience in training, have got to be necessarily given preferential treatment since it is concerned with the medical laboratory technology which would expect more experience. Further, when the matter was taken up before the Tribunal, an order came to be passed, a copy of which is placed in the hands of this Court. The above said reason is adduced by the Tribunal for giving preferential treatment. It is also true that for a period of about a decade, the DMLT course was not available, and thus, the candidates, who are the petitioners herein, along with others were compelled to undergo CMLT course, and it was for a period of one year. As stated above, the DMLT candidates having two years training, have got to be necessarily given preference in view of their experience and training than the CMLT course for one year training. The main contention put forth by the learned Counsel for the petitioners that all these

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petitioners along with others underwent CMLT course with the fond hope of getting employment opportunity in the hands of the Government; and that in view of the above said G.O., if the DMLT candidates are preferred and posted, the petitioners are likely to lose the job opportunities cannot be countenanced. Such a situation should have been taken into consideration by the Government which has resulted in creation of these posts namely Laboratory Technician Grade-III and also Field Assistant which are exclusively for the candidates from the CMLT. It is brought to the notice of the Court by the State that more than 2000 posts in Laboratory Technician Grade-III and Field Assistant were available out of which more than 1000 posts from the CMLT candidates have been filled up, and the rest of the posts are yet available. According to the learned Counsel for the State, 442 posts are available today to be filled up.

12.Now, at this juncture, it is pertinent to point out that in view of the stay originally granted by this Court, even the appointments given to the DMLT candidates were immediately cancelled by the State, and thereafter, before the Division Bench, an appeal was preferred, where the stay has been vacated, and even then, the posts remained not filled up. Under the circumstances, this Court is of the considered opinion that the G.O. Cannot, at any stretch of imagination, be called as unreasonable. A reading of the G.O. would make it clear that preferential treatment should be given to the DMLT candidates who have completed the course of two years and training, and apart from that, if the posts are available, the candidates from CMLT have got to be filled up. From the data given by the State, it could be seen that out of 442 vacancies, 332 candidates from the DMLT have applied for, and 110 posts are yet available. Hence, there cannot be any impediment for the State for filling up these posts from CMLT candidates available as on today. This Court is of the considered opinion that the G.O. cannot be said to be unreasonable since it stipulates that the DMLT candidates who underwent two years training, should be given preference than the CMLT candidates who have completed one year course. It is further to be pointed out that the G.O. does not say that the CMLT candidates should not be appointed. On the contrary, it would say that preference should be given to the DMLT candidates, and if the posts are available, the CMLT candidates could also be appointed. At this juncture, it is again to be pointed out that Laboratory Technicians Grade-III and also Field Assistant posts have been created by the State in order to give job opportunity to the CMLT candidates who were on the fond hope of getting the job. Under the circumstances, this Court is of the considered opinion that while dismissing the writ petitions, it would be fit and proper to issue a direction to the State to fill up the vacancies from the DMLT course candidates and the rest from the CMLT course candidates. It is also made clear that the candidates who were originally appointed and whose appointments were terminated pending the proceedings in this Court, could be considered along with others.

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13.Accordingly, a direction is issued, and these writ petitions are dismissed. No costs. Consequently, connected MPs are also dismissed.

vvk/nsv

Sd/
Asst.Registrar

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Sub Asst.Registrar

To:

1.The Secretary to Government,
Government of Tamil Nadu,
Health and Family Welfare Department,
Fort Saint George, Chennai-600 009.

2.The Director of Medical Education,
Kilpauk, Chennai.

3.The Director of Public Health and
Preventive Medicine, Chennai.

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Health Services, Chennai-600 006.

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Nagapattinam.

10.The District Employment Officer,
Nagapattinam.

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11. The District Employment Officer,
    Coimbatore.

+ 3 ccs to Government Pleader SR No. 63817, 63819 & 63820

+ 1 cc to Mr. V. Chandrasekaran, Advocate SR No.64060

+ 1 cc to Gladys Daniel, Advocate SR No. 63915

+ 1 cc to Mr. R. Singgaravelan, Advocate SR No. 63850

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